UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: C/A No. 15-05951-JW

Chapter 12

Simpson Farms, LLC,

Debtor(s).

ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY

This matter comes before the Court on the Motion for Relief from the Automatic Stay ("Motion") filed by Daisy W. Brant ("Brant"). Simpson Farms, LLC ("Debtor" or "the LLC") objected to the Motion and a hearing was held. In accordance with Fed. R. Civ. P. 52, made applicable to these proceedings by Fed. R. Bankr. P. 7052 and 9014(c), and based upon the pleadings and arguments of counsel presented at the hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Brant was previously married to William Robert Simpson ("Simpson Sr."), a shareholder of Debtor. On February 24, 2003, Brant commenced a divorce proceeding in the Clarendon County Family Court ("Family Court"), naming Simpson Sr., individually and as shareholder/member of Debtor; her son, William R. Simpson, Jr. ("Simpson Jr."), as shareholder/member of Debtor; and Debtor as parties. On December 31, 2004, the parties were divorced by a Final Decree of Divorce ("Final Decree") entered by the Family Court on that date. Debtor and Simpson Jr. were included as parties to the divorce proceeding because Simpson Sr. had transferred some items of marital property into the LLC and the LLC is owned by Simpson Sr. and Simpson Jr. in equal shares. In that proceeding, the Family Court apportioned the marital estate and

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awarded Brant seven parcels of real estate, among other things. The parcels awarded were described in the Final Decree as being owned by Simpson Sr., individually, and were listed as follows:

a.	2.1 acres	\$7,500
b.	1.4 acres	\$5,000
c.	161.1 acres	\$175,000
d.	1.3 acres	\$15,000
e.	6.7 acres	\$35,000
f.	133.2 acres	\$150,000
g.	House and 16 acres	\$50,000

The Final Decree ordered Simpson Sr. to transfer such properties to Brant within 30 days of the date of the Final Decree. The Family Court further found that "the transfer of marital property into the LLC was effective as to Son, and Husband should be charged with only 50% of the value of the property held by the LLC."

2. Simpson Sr. appealed the Family Court's equitable division of the marital property in the Final Decree. He argued that the Family Court erred in awarding to Brant the 133.2-acre tract, 16-acre tract¹ and 161.1-acre tract ("Disputed Properties"), which were in fact titled in the name of Debtor. Neither Simpson, Jr. nor Debtor joined in the appeal of the Final Decree. On April 4, 2007, the South Carolina Court of Appeals ("Court of Appeals") denied the appeal, holding that Simpson Sr.'s argument was not

parties referred to the tract in the same manner throughout this proceeding.

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¹ The parties agree that Simpson Sr. does not own the house and a 3.5 acre portion of the 16 acres upon which the house is situated, as that property is owned by a third party as the result of a quiet title action brought by the third party and resolved by consent order during the course of the divorce proceedings. Nevertheless, for consistency, the Court will continue to refer to the tract as the 16-acre tract since the

preserved for appellate review. The South Carolina Supreme Court denied Simpson Sr.'s petition for writ of certiorari on February 21, 2008.

- 3. Thereafter, Brant filed a contempt action, alleging that Simpson Sr. and Simpson Jr. were in contempt for failing to transfer the Disputed Properties awarded to her in the Final Decree. The Family Court found that Simpson Sr. was not in contempt because Debtor was the titled owner of the Disputed Properties. Brant filed a motion to reconsider, arguing the Family Court's contempt order caused her to receive less than her percentage share of the marital assets. In response to Brant's motion, the Family Court issued an order on March 18, 2011, reapportioning the marital property. This order was appealed by Simpson Sr. and Simpson Jr., individually, as well as by Brant.
- 4. On June 26, 2013, the Court of Appeals issued an order ("Court of Appeals Order") reversing the Family Court's modifications to the Final Decree and remanding for enforcement of the Final Decree. In this order, the Court of Appeals made several findings which are pertinent in this matter:
 - a. The Family Court's order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal..., [and] it was error for the Family Court to modify the property provisions in the Final Decree.
 - b. [Simpson Sr. and Simpson Jr.'s] argument that [Simpson Sr.], individually, could not comply with the Final Decree because the subject properties were titled in the name of the LLC was barred by the doctrine of res judicata.... Second, the law of the case doctrine precluded [Simpson Sr. and Simpson Jr.] from relitigating the issue.
 - c. [E]ven if the Final Decree mistakenly declared the subject properties to be titled in [Simpson Sr.'s] name, it was the duty of the Family Court to interpret the intent of the property provisions in the Final Decree and effect compliance as best as possible.... In this instance, the Final Decree orders [Simpson Sr.] to transfer to [Brant] full ownership in each of the subject properties as part of her equitable

- apportionment award. Therefore, we interpret the decree as mandating that Brant receive full ownership in the subject properties.
- d. Our supreme court has held that the Family Court has subject matter jurisdiction to equitably apportion property owned by a third party. As to the subject properties, the Family Court classified each one as marital property titled in [Simpson Sr.'s] individual name. Neither [Simpson Sr., Simpson Jr.,] or the LLC properly challenged this classification. Because the LLC was joined as a party to the divorce action and the Family Court determined the subject properties were marital property, the Family Court had the authority to award full ownership in the subject properties to [Brant], regardless of how legal title was held.
- e. Pursuant to the Final Decree, [Brant] was entitled to have full ownership in the subject properties... Furthermore, the Family Court reiterated throughout the Final Decree that there was no clear identification and valuation of the marital property due, in large part, to [Simpson Sr. and Simpson Jr.'s] resistance to any effort to disclose the exact nature of their holdings. Therefore, it would be inappropriate and inequitable to allow [Simpson Sr. and Simpson Jr.] to benefit, by avoiding transfer of the subject properties to [Brant], from an error created by their own conduct.
- f. The [Family Court's] finding that the LLC was the titled owner of the subject properties [in the March 18, 2011 contempt order] was erroneous.
- g. We find equity and fairness require the Family Court to carry the terms of the Final Decree into effect by requiring [Simpson Sr., Simpson Jr.], and the LLC to join in the execution of the deeds to the subject properties to [Brant].
- 5. The South Carolina Supreme Court denied Debtor's petition for certiorari to review the Court of Appeals Order on September 25, 2014.
- 6. In June of 2015, Brant filed another contempt action against Simpson and Debtor to enforce the provisions of the Final Decree and Court of Appeals Order by requiring Debtor and Simpson Farms to transfer title to the Disputed Properties to Brant. The contempt hearing was scheduled for November 10, 2015.

- 7. On November 5, 2015, Debtor filed a voluntary petition for relief under Chapter 12 of the Bankruptcy Code.
- 8. On November 10, 2015, Simpson filed a voluntary petition for relief under Chapter 12 of the Bankruptcy Code.
- 9. On December 3, 2015, Brant filed a Motion for Relief from Stay in each bankruptcy case. Brant seeks relief from the automatic stay on the following grounds: (1) the Disputed Properties are not property of the estate since Debtor holds merely bare legal title; (2) for cause pursuant to § 362(d)(1) because Debtor has failed to provide adequate protection, there is no equity in the properties, and the Disputed Properties are not necessary to Debtor's reorganization; and (3) pursuant to § 362(d)(4) because Debtor's filing on the eve of the Family Court hearing was part of a "scheme to delay, hinder or defraud" Brant.
- 10. A hearing was held on the Motions for Relief from Stay on January 6, 2016. At the hearing, Simpson Sr. agreed to convey his interest in the properties titled in his name to Brant and consented to the lifting of the stay as to him individually. The parties presented arguments regarding the issue of whether the Disputed Properties were property of Debtor's estate and the Court took that issue under advisement. The parties agreed that the remaining grounds for the Motion would be considered, if necessary, at a later hearing.
- 11. A consent order granting relief from the stay as to Simpson Sr. was entered in his case on January 27, 2016.

CONCLUSIONS OF LAW

The issue before the Court at this time is whether the Disputed Properties constitute property of Debtor's estate. Section 541(a)(1) of the Bankruptcy Code provides that property of the estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." "Although federal law defines what property interests are included within the bankruptcy estate, state law determines the nature and existence of a debtor's property interests." In re Katzburg, 326 B.R. 606, 609 (Bankr. D.S.C. 2004) (citing In re Moffett, 356 F.3d 518 (4th Cir. 2004)); see Butner v. U.S., 440 U.S. 48, 55 (1970) ("Property interests are created and defined by state law."). Debtor argues that the Disputed Properties are property of the estate because the Final Decree did not expressly order it to transfer any properties and the Family Court did not order it to convey the Disputed Properties as directed by the Court of Appeals upon remand before the bankruptcy petition was filed. Since no documents transferring title have been executed and recorded, Debtor contends that it continues to have an ownership interest in the Disputed Properties as they remain titled solely in its name. Brant argues that Debtor holds only bare legal title to the Disputed Properties pursuant to the Final Decree and the Court of Appeals Order.

The resolution of this issue requires this Court to interpret the Final Decree and the Court of Appeals Order, both of which are final orders not subject to further appeal. In the Final Decree, the Family Court found that the Disputed Properties were property owned individually by Simpson Sr., which were part of the marital estate, and ordered that the Disputed Properties be transferred to Brant as a "division in kind" of the marital estate, in addition to a partial cash payment by Simpson Sr. to Brant. The Final Decree

effected a transfer of the equitable interest in the Disputed Properties to Brant. That equitable interest was vested as of the date of the Final Decree. See In re Brabham, 184 B.R. 476 (Bankr. D.S.C. 1995) (finding that a wife's right to receive a percentage of the husband's retirement benefits vested upon the entry of the divorce decree as a property settlement or division of property); HENRY J. SOMMER & MARGARET D. MCGARITY, COLLIER FAMILY LAW AND THE BANKRUPTCY CODE ¶ 2.01[5] (Matthew Bender 2011) ("It is generally acknowledged that once the divorce decree becomes final the property interests awarded are vested pursuant to the decree. As long as the property existed at the time of the decree, even if it was cash, a prebankruptcy court order divesting the debtor spouse of an interest in the property will normally keep that property out of the debtor spouse's bankruptcy estate.").

Debtor cannot now dispute the ownership of the Disputed Properties as set forth in the Final Decree. As stated by the Court of Appeals in its Order, "[t]he Family Court's order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal." Simpson v. Simpson, 746 S.E.2d 54, 59 (S.C. Ct. App. 2013) (citing S.C. Code Ann. § 20-3-620(c)). Debtor did not timely appeal the Final Decree and therefore cannot seek modification of its findings even if the Family Court's conclusions regarding ownership of the Disputed Properties were inaccurate. See id. at 61 (citing Green v. Green, 491 S.E.2d 260, 262 (S.C. Ct. App. 1997) (stating "the law in South Carolina is exceedingly clear that the Family Court does not have the authority to modify court ordered property divisions"). The Court of Appeals found that, pursuant to the Final Decree, Brant "was entitled to have full ownership in the subject properties" and that the issue of ownership of the

Disputed Properties could not be relitigated because that issue was barred by the doctrines of res judicata and the law of the case.² Id. at 60 (citing Duckett v. GoForth, 649 S.E.2d 72, 81 (S.C. Ct. App. 2007) ("Res judicata precludes parties from subsequently relitigating issues actually litigated and those that might have been litigated in a prior action."); Judy v. Martin, 674 S.E.2d 151, 153 (S.C. 2009) (stating that under the law of the case doctrine, "a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court"). Additionally, the Court of Appeals confirmed the Family Court's subject matter jurisdiction to equitably apportion property regardless of how legal title is held, finding that because the LLC was properly joined as a party to the divorce action,³ the Family Court had the authority to award full ownership in the Disputed Properties to Brant.⁴ Id. at 62 (citing In re Sexton, 380 S.E.2d 832, 834 (S.C. 1989) (holding that the Family Court has subject matter jurisdiction to equitably apportion property owned by a third party)). The Court of Appeals then remanded the case to the Family Court to enforce the property divisions in the Final Decree by ordering Simpson Sr., Simpson Jr. and the LLC to join in the execution of the deeds to the Disputed Properties to Brant; that is, to complete the ministerial acts necessary to

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² Debtor argues that a finding that Brant has sole ownership of the Disputed Properties is inequitable because it deprives Simpson Jr. of his 50% interest in the LLC. However, Simpson Jr. did not appeal the Family Court's finding in the Final Decree that the Disputed Properties were the individual property of Simpson Sr. Moreover, both the Family Court and Court of Appeals noted that the Family Court's difficulty in obtaining a clear identification and valuation of the marital property was due, in large part, to Simpson Sr. and Simpson Jr.'s resistance to any effort to disclose the exact nature of their holdings. The Court of Appeals found that "it would be inappropriate and inequitable to allow [Simpson and Simpson Jr.] to benefit, by avoiding transfer of the subject properties to [Brant], from an error created by their own conduct."

³ Debtor withdrew its argument that it was not a party to the divorce proceeding at the hearing on the Motion.

⁴ The Court of Appeals discussed the Family Court's finding in the Final Decree that "the transfer of marital property into the LLC was effective as to Son, and Husband should be charged with only 50% of the value of the property held by the LLC," but nevertheless reached the conclusion that the Family Court had the authority to award full ownership in the Disputed Properties to Brant.

document the transfer in the public records. With the denial of the writ of certiorari by the South Carolina Supreme Court, the appeals process for the Final Decree concluded prior to the bankruptcy filing. Based on the Final Decree, the Court of Appeals Order, and the Supreme Court's denial of certiorari, this Court finds that the state courts have conclusively determined that Brant is the owner of the Disputed Properties. Therefore, Debtor maintains only bare legal title, which should not be considered property of the estate.⁵

The circumstances of this case are analogous to cases where a foreclosure sale has occurred prior to a bankruptcy filing, but the Master's deed was not executed to document the transfer of title. In those cases, this Court has held that where a debtor has been divested of all but bare legal title to property by state court foreclosure sale order, cause exists to grant relief from the automatic stay to allow the state court to conclude the matter. See In re Watts, 273 B.R. 471, 474 (Bankr. D.S.C. 2000) (Waites, J.) (finding that the debtor had neither a legal nor equitable interest in the property after the hammer fell at a pre-petition foreclosure sale and concluding that the property could not be deemed to constitute property of the estate, despite the fact that Master's deed transferring title had not been executed prior to the bankruptcy filing); In re Madison, 438

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⁵ It appears that this Court may be barred by the *Rooker-Feldman* doctrine from determining ownership of the Disputed Properties. The *Rooker-Feldman* doctrine bars "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." <u>Exxon Mobil Corp. v. Saudi Basic Indus. Corp.</u>, 544 U.S. 280, 284-85 (2005); <u>see also In re BHB Enterprises</u>, LLC, slip op. 1997 WL 33344249 (Bankr. D.S.C. 1997) (stating that the *Rooker-Feldman* doctrine bars lower federal courts from undertaking appellate review of state court decisions). Debtor's attempt to dispute ownership of the Disputed Properties in this case appears to be an effort to collaterally attack the validity of the Final Decree and Court of Appeals order. <u>See Weaver v. Texas Capital Bank N.A.</u>, 660 F.3d 900, 904 (5th Cir. 2011) (stating that the *Rooker-Feldman* doctrine generally applies only where a party seeks relief that "directly attacks the validity of an existing state court judgment".

B.R. 866, 870 (Bankr. D.S.C. 2010) (Duncan, J.) (same); <u>In re Holmes</u>, C/A No. 99-08796-JW, slip op (Bankr. D.S.C. 1999).

Furthermore, even though Debtor may have possession of the Disputed Properties, this Court has held that mere possession of property is insufficient to establish an equitable interest in the property such that the property constitutes property of the estate, absent a good faith, colorable claim to or basis for possession of the property. In re Lee, slip op. 2011 WL 9154707 (Bankr. D.S.C. Feb. 28, 2011). Debtor is bound by the determination of ownership of the Disputed Properties in the state court orders, since it elected not to appeal the Final Decree and since the South Carolina Supreme Court denied certiorari to review the Court of Appeals Order. Debtor cannot make the Disputed Properties property of the estate by withholding property belonging to Brant in contravention of those orders in an attempt to again dispute ownership of the Disputed Properties. Therefore, it has no good faith basis to claim a possessory interest sufficient to invoke the automatic stay.

Because the Disputed Properties do not constitute property of the estate pursuant to 11 U.S.C. § 541, the Court finds that cause exists to lift the automatic stay under 11 U.S.C. § 362(d)(1). Furthermore, the interests of judicial economy and comity support the lifting of the stay to allow the state court to conclude the matter, since it involves only issues of state law and the interpretation and enforcement of state court orders.⁶ In re Lee, 428 B.R. 667 (Bankr. D.S.C. 2009) (granting relief from stay to allow issue of title to property to be finally determined in state court and noting the bankruptcy court's broad

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⁶ In light of the Court's finding that Brant is the owner of the Disputed Properties by virtue of the prior state court orders and Debtor maintains only bare legal title and the other findings set forth above, it is unnecessary to determine at this time whether Debtor holds the Disputed Properties in constructive trust for Brant.

discretion in finding cause under 11 U.S.C. § 362(d)(1)). "It is appropriate for bankruptcy courts to avoid incursions into family law matters [including property distribution] out of consideration of court economy, judicial restraint and deference to our state court brethren and their established expertise in such matters." In re Brabham, 184 B.R. at 482 (citing Robbins v. Robbins, 964 F.2d 342, 345-46 (4th Cir. 1992) (recognizing "the state family court has special expertise in domestic matters to which the bankruptcy court owes significant deference")).

CONCLUSION

For the foregoing reasons, the Motion is granted and the stay is hereby lifted to allow the Family Court to enforce the Final Decree as directed by the Court of Appeals Order.

AND IT IS SO ORDERED.

FILED BY THE COURT 01/29/2016



Entered: 01/29/2016

ປ່ຽ Bankruptcy Judge District of South Carolina

In Ewaites